Appeal No. 17-7035
(consolidated with Appeal No. 17-7039)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

American Society for Testing and Materials; National Fire Protection Association, Inc.; and American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.,

Appellees,

v.

Public.Resource.Org, Inc.,

Appellant.

Appeal from the United States District Court for the District of Columbia
Hon. Tanya S. Chutkan, Case No. 1:13-cv-1215-TSC-DAR

APPELLANT PUBLIC.RESOURCE.ORG'S RESPONSE TO ORDER TO SHOW CAUSE

Andrew P. Bridges (CSB No. 122761)
abridges@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

Attorneys for Appellant
Public.Resource.Org, Inc.

June 28, 2017

The Court ordered Public.Resource.Org, Inc. (Public Resource) to show cause why the Court should not dismiss its appeals for lack of jurisdiction. Document 1680061.

The short answer is that under 28 U.S.C. § 1292(a)(1), this Court has jurisdiction because both appeals arise from interlocutory orders granting injunctions. The Court should therefore not dismiss the appeals.

FACTS

The Appellees in these consolidated appeals were plaintiffs in the district court. Upon their motion, the district court granted permanent injunctions against Public Resource. The underlying decisions from which Public Resource appeals are in Document 1669990 before this Court: Exhibits C and D to that document are the order and amended order on appeal in no. 17-7035, and Exhibit G is the order on appeal in no. 17-7039.

The order in case no. 17-7035 (a) enjoined Public Resource "from all unauthorized use" of nine works of the plaintiffs, (b) enjoined Public Resource "from all unauthorized use" of those plaintiffs' registered trademarks, and (c) ordered Public Resource within five days to remove all versions of the nine works from all websites in its possession. The amended order allowed certain exceptions to the previous order regarding "unauthorized use" of the plaintiffs' registered trademarks. *See* Document 1669990, Exs. C and D.

The order in case no. 17-7039 (a) enjoined Public Resource from "all unauthorized use" of the 1999 edition of the Standards for Educational and Psychological Testing and (b) ordered Public Resource within five days to remove all versions of that standard from all websites in its possession. *See* Document 1669990, Ex. G.

Public Resource timely filed notices of appeal. Citing Federal Rule of Civil Procedure 54(b), this Court ordered Public Resource to show cause why the Court should not dismiss the appeals.

ARGUMENT

Federal Rule of Civil Procedure 54(b), which the Court's order cited, governs finality but not appealability of a judgment or order. Appealability here derives from 28 U.S.C. § 1292(a)(1), which establishes jurisdiction over interlocutory orders granting or modifying injunctions.

If an interlocutory order "'clearly grant[s] or den[ies] a specific request for injunctive relief' . . . it falls within the plain text of § 1292(a)(1) and is appealable without any further showing." *Salazar ex rel. Salazar v. District of Columbia*, 671 F.3d 1258, 1261 (D.C. Cir. 2012) (quoting *Int'l Ass'n of Machinists & Aerospace Workers, AFL–CIO v. E. Air Lines, Inc.*, 849 F.2d 1481, 1486 n.11 (D.C. Cir. 1988); *I.A.M. Nat'l Pension Fund Benefit Plan A v. Cooper Indus., Inc.*, 789 F.2d 21, 24 n.3 (D.C. Cir. 1986)). The orders from which Public Resource appealed explicitly granted Appellees' specific requests for injunctive relief. They are therefore appealable without any further showing. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1) and should not dismiss these appeals.

Dated: June 28, 2017

Respectfully submitted,

FENWICK & WEST LLP

By: */s/ Andrew P. Bridges*
Andrew P. Bridges

Attorneys for Appellant
Public.Resource.Org, Inc.

CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 454 words, according to the word-processing program used to prepare it.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it uses proportionally spaced 14-point Times New Roman typeface.

Dated: June 28, 2017

By: */s/ Andrew P. Bridges*
Andrew P. Bridges

Attorneys for Appellant
Public.Resource.Org, Inc.

CERTIFICATE OF SERVICE

I, Andrew P. Bridges, hereby certify that on June 28, 2017, I electronically filed the foregoing Response to Order to Show Cause with the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which will serve all counsel who are registered CM/ECF users.

Dated: June 28, 2017

By: */s/ Andrew P. Bridges*
Andrew P. Bridges

Attorneys for Appellant
Public.Resource.Org, Inc.